

Judge Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE AIR FORCE, et al.,

Defendants.

No. C06-5195 RBL

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendants the Department of the Air Force (the "Air Force"), Robert M. Gates, the Secretary of Defense, Michael B. Donley the Secretary of the Air Force, and Colonel Janette Moore-Harbert, the commander of the 446th Aeromedical Evacuation Squadron, McChord Air Force Base, hereby answer plaintiff's Complaint (Docket #1) in the following numbered paragraphs, which correspond to the Complaint's numbered paragraphs.¹

1. This paragraph contains plaintiff's characterization of this action, not factual allegations requiring a response.

2. This paragraph contains a legal conclusion, the basis for the Court's subject

¹ In this official-capacity action, the present office holders have been automatically substituted for their predecessors as defendants. *See* Fed. R. Civ. P. 25(d).

1 matter jurisdiction, to which no factual response is required.

2 3. This paragraph contains a legal conclusion, the basis for the Court's subject
3 matter jurisdiction, to which no factual response is required. To the extent that a factual response
4 is required, defendants deny that 28 U.S.C. § 1346 provides a basis for the Court's subject matter
5 jurisdiction.

6 4. Defendants deny the allegations in the first sentence of this paragraph. The
7 second sentence of this paragraph contains plaintiff's characterization of this action, not factual
8 allegations requiring a response.

9 5. Defendants deny the allegations in this paragraph, except to admit that the United
10 States Department of the Air Force is a military department of the United States of America.

11 6. Defendants deny the allegations in this paragraph.

12 7. Defendants deny the allegations in this paragraph. In this official-capacity action,
13 Robert M. Gates has been automatically substituted for Donald H. Rumsfeld in the office of
14 Secretary of Defense.

15 8. Defendants deny the allegations in this paragraph. In this official-capacity action,
16 Michael B. Donley has been automatically substituted for Michael W. Wynne in the office of
17 Secretary of the Air Force.

18 9. Defendants deny that Colonel Mary L. Walker is a defendant in this official-
19 capacity action; rather Colonel Janette Moore-Harbert has been automatically substituted for
20 Colonel Walker in the office of Commander, 446th Aeromedical Evacuation Squadron,
21 McChord, Air Force Base. Defendants deny the remaining allegations in this paragraph except to
22 admit that Colonel Walker was the Commander, 446th Aeromedical Evacuation Squadron,
23 McChord, Air Force Base, in November 2004, when administrative discharge proceedings
24 against plaintiff were initiated.

25 10. This paragraph contains a legal conclusion to which no factual response is
26 required.

27 11. This paragraph contains a legal conclusion to which no factual response is
28 required.

1 12. This paragraph contains a legal conclusion to which no factual response is
2 required. To the extent that a factual response is required, defendants deny that the selection
3 cited constitutes the only pertinent part of 10 U.S.C. § 654.

4 13. The first sentence of this paragraph contains a legal conclusion to which no
5 factual response is required. To the extent that a factual response is required, defendants deny
6 that the selection cited constitutes the complete text of Air Force Instruction (“AFI”) 36-3209 and
7 that the quoted text fully and accurately reflects the contents of AFI 36-3209 §§ 2.30-33.
8 Defendants deny the allegations contained in the second sentence of this paragraph.

9 14. This paragraph contains a legal conclusion to which no factual response is
10 required. To the extent that a factual response is required, defendants deny that the quoted text
11 fully and accurately reflects the contents of AFI 36-3209 § 4.17.5.

12 15. Defendants are without knowledge or information sufficient to form a belief as to
13 the allegations in this paragraph.

14 16. As to the allegations in the first sentence of this paragraph, defendants deny that
15 plaintiff entered the Air Force on March 27, 1987, but defendants admit that plaintiff attended
16 Military Indoctrination Medical Service Officers and that plaintiff was commissioned a Second
17 Lieutenant on April 11, 1989. Defendants admit the allegations in the second sentence of this
18 paragraph. Defendants deny the allegations in the third sentence of this paragraph.

19 17. Defendants admit that plaintiff’s initial duty assignment included the
20 responsibilities identified in this paragraph, but defendants deny that plaintiff held each of those
21 responsibilities simultaneously and for the entire duration of her first assignment.

22 18. Defendants admit the allegations in the first sentence of this paragraph.
23 Defendants deny the allegations in the second sentence of this paragraph except that defendants
24 (i) admit that plaintiff was transferred to Scott Air Force Base and that plaintiff served, at various
25 times and not necessarily simultaneously, as a flight nurse, nurse scheduler, flight nurse examiner
26 in either the 57th Aeromedical Evacuation Squadron or the 375th Aeromedical Evacuation
27 Squadron, and (ii) are without knowledge or information sufficient to form a belief as to whether
28 plaintiff actually served as a medical aircrew training officer. As to the allegations in the third

1 sentence of this paragraph, defendants admit that some Aeromedical Evacuation Squadron
2 personnel are responsible for in-flight management and care of ill and injured patients
3 transported by military aircraft, but deny that all Aeromedical Evacuation Squadron personnel
4 have those responsibilities.

5 19. Defendants deny the allegations in the first sentence of this paragraph except to
6 admit that plaintiff was discharged from active duty on December 15, 1995; that plaintiff
7 transferred into ready reserve status on December 16, 1995; and that plaintiff was reassigned to
8 the 446th Aeromedical Evacuation Squadron on March 18, 1996. Defendants deny the
9 allegations in the second sentence of this paragraph except that defendants admit that plaintiff
10 served, at various times and not necessarily simultaneously, as a flight nurse, flight nurse
11 examiner, officer in charge of weight management and physical fitness, officer in charge of
12 ground training, and the standards and evaluation flight commander. Defendants deny the
13 allegations in the third sentence of this paragraph.

14 20. Defendants deny the allegations in this paragraph except to admit that plaintiff
15 received the awards indicated (with the exception of the Air Force Training Medal).

16 21. Defendants admit the allegations in this paragraph except to deny the implication
17 that President George W. Bush personally presented an Air Medal to plaintiff.

18 22. Defendants admit that plaintiff received the award referenced in the first sentence
19 of this paragraph, but they deny that plaintiff fully and accurately characterized the basis for the
20 award, and instead defendants refer to the copy of the award for its full and accurate contents.
21 Defendants are without knowledge or information sufficient to form a belief as to the allegations
22 in the second sentence of this paragraph.

23 23. Defendants deny the allegations contained in the first sentence of this paragraph.
24 As to the allegations in the remainder of the paragraph, defendants admit that plaintiff's annual
25 review contained that identified language (except for the word "crated" in line 9).

26 24. Defendants are without knowledge or information sufficient to form a belief as to
27 the allegations in this paragraph except that defendants deny that Colonel Mary Walker remains a
28 defendant in this action.

1 25. Defendants are without knowledge or information sufficient to form a belief as to
2 the allegations in this paragraph.

3 26. Defendants are without knowledge or information sufficient to form a belief as to
4 the allegations in this paragraph.

5 27. Defendants admit the allegations contained in the first sentence of this paragraph.
6 Defendants deny the allegations in the second sentence of this paragraph to the extent that the
7 sentence suggests or implies that the civilian woman referenced in this second sentence is the
8 same civilian woman who is referenced in the first sentence of this paragraph; to the extent that
9 the civilian woman referenced in the second sentence of this paragraph is separate and distinct
10 from the civilian woman referenced in the first sentence of this paragraph, defendants admit the
11 allegations in the second sentence of this paragraph.

12 28. Defendants deny the allegations contained in the first three sentences of this
13 paragraph except to admit that plaintiff was informed that an administrative separation action
14 was being initiated against plaintiff for homosexual conduct under the provisions of AFI 36-
15 3209. Defendants admit the allegations contained in the fourth sentence of this paragraph.

16 29. As to the allegations in the first sentence of this paragraph, defendants deny that
17 plaintiff received the referenced certified mail on November 9, 2004, and defendants deny that
18 plaintiff's characterization of the memorandum fully and accurately reflects its contents and
19 instead refer to the copy of the letter for its full and accurate contents. Defendants admit the
20 allegations contained in the second sentence of this paragraph. Defendants deny the allegations
21 in the third sentence of this paragraph except to admit that plaintiff has not participated in any
22 pay or points activity for the Air Force Reserves after November 5, 2004.

23 30. Defendants deny that this paragraph fully and accurately reflects the contents of
24 the letter and instead refer to the copy of the letter for its full and accurate contents.

25 31. Defendants deny that the first sentence of this paragraph fully and accurately
26 reflects the contents of the document and instead refer to the copy of the document for its full and
27 accurate contents. Defendants admit the allegations in the second sentence of this paragraph.
28 Defendants deny the allegations in the third sentence of this paragraph and instead admit that

1 plaintiff's discharge hearing has been held at Robins Air Force Base in Georgia.

2 32. Defendants deny the allegations in this paragraph.

3 33. Defendants deny the allegations in this paragraph.

4 Defendants further deny that plaintiff is entitled to any relief whatsoever and deny any
5 and all allegations not specifically responded to herein.

6 **AFFIRMATIVE DEFENSE**

7 1. Plaintiff has waived and/or forfeited her ability to seek reinstatement based on
8 10 U.S.C. § 654(b)(1).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, defendants pray that the Court dismiss plaintiff's suit with prejudice,
11 render judgment that plaintiff take nothing, assess costs against plaintiff, and award defendants
12 all other relief to which they are entitled.

13
14 Dated: October 23, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2009, I electronically filed the foregoing Defendants' Answer to Plaintiff's Complaint, with the Clerk of the Court using the CM/ECF system that I understand will send notification of such filing to the following persons:

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